

OPINION
48-89

March 20, 1948 (OPINION)

MARRIAGE

RE: Husband and Wife - Responsibility for Stepchildren - Sec. 14-0909

Your letter of March 3, 1948, addressed to the attorney general, has been received in which you present the following inquiry:

Section 14-0909 Revised Code of North Dakota for 1943 reads as follows: 'A husband is not bound to maintain his wife's children by a former husband, but if he receives them into his family and supports them, it is presumed that he does so as a parent and when such is the case, they are not liable to him for their support, nor he to them for their services.'

May a man who marries a woman with children by a former marriage and accepts them into his home and supports them later disclaim the responsibility once assumed?"

Your office presented a similar question about a year ago, and on March 6, 1947, we wrote you in response thereto, in which, among other things, we stated:

Section 14-0909 quoted herein speaks for itself. It provides specifically that a husband is not bound to maintain his wife's children by a former husband, but if he receives them into his family and supports them it is presumed he does so as a parent. You will note that two things are required to hold a stepfather liable for support of stepchildren, namely, he must voluntarily receive them into his family and support them. In other words, the acceptance must be voluntary and in addition he must support them. Unless he does these two things he would not be liable.

Your question cannot be answered by any general formula which can be applied to every case but each case must stand on its own state of facts."

What we said in our opinion of March 6, 1947, is applicable here.

The question presented, however, is where the relationship has once been established, that is where a man who marries a widow with minor children by a former marriage, voluntarily and unconditionally accepts them into his home and supports them, may he afterwards disclaim the responsibility thus assumed and refuse to furnish support for such minor children.

Where a man has married a widow with minor children by a former marriage and voluntarily and unconditionally accepts them into his home and supports them, domestic and parental relationship has been established and the family status of the minor children is fixed. It would seem unreasonable that were the domestic status has been thus established the relationship may subsequently be changed by

capricious change of mind and the family relationship thus disrupted.

A similar question was before the supreme court of our state in the case of Druey v. Druey, 63 N.D. 786, 249 N.W. 782. In that case, one Druey had married a widow with minor children by a former marriage. Certain disagreement arose between the husband and wife, with reference to a minor girl, daughter of the wife by a former marriage, and section 14-0909 of the 1943 Revised Code was construed. In its opinion, among other things, the court said:

Under this statute a husband can stand on his strict legal rights and refuse to have anything to do with his stepchildren, but when he receives them into his family the law presumes that he does so as a parent and they stand in their relations to each other as parents and children."

The court further said:

A stepparent does not, merely by reason of the relation, stand in loco parentis to the stepchild. . . . But a stepparent who voluntarily receives the stepchild into the family and treats it as a member thereof stands in the place of the natural parent, and the reciprocal rights, duties, and obligations of parent and child continue as long as such relation continues."

The court further said:

Dorothy (the minor child involved) was only twelve years old when the plaintiff and defendant married and the defendant received her into the family, treating her as a member thereof, contributing largely to her support and education and, in law, standing in the place of the natural parent with their reciprocal rights, duties and obligations the same as those of parent and child."

It is the opinion of this office, therefore, that where a man marries a widow with minor children by a former marriage and voluntarily and unconditionally accepts them into a home and supports them, the relationship of parent and child is thereby assumed as a matter of law, and a domestic relationship and status thus established continue until the legal emancipation of the child or children or until the relation is discontinued voluntarily and by mutual consent.

The relationship thus assumed has legal sanction and is necessary for the protection of the home, minor children, and the general welfare of society.

NELS G. JOHNSON

Attorney General